

REMARKS

The present amendment is submitted in conjunction with a Request for Continued Examination (RCE) and in response to the final Office Action dated March 3, 2011, which set a three-month period for response, making this amendment due by June 3, 2011.

Claims 1-3 and 6 are pending in this application

In the final Office action, the drawings were objected to as not showing every feature of the invention specified in the claims, specifically, the “resilient stem” of claims 1 and 2 5. The specification was objected to on similar grounds. Claims 1-4 and 6 were rejected under 35 U.S.C. 112, second paragraph, as failing to particularly pint out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,096,002 to Focht in view of U.S. Patent No. 3,865,283 to Hayes. Claims 2-4 and 6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Focht in view of Hayes and further in view of U.S. Patent No. 3,156,382 to Michell.

Turning first to the objection to the drawings and related objection to the specification, the term “resilient valve stem” has been changed to “resiliently biased valve stem”, which the Applicants submit obviate this objection.

In addition, the geometric orientation of the axis introduced in the last amendment after the recent conference with the Examiner has been specified in

the claims in a more detailed manner based on the disclosure and the figures. In particular, the axis is an imaginary line extending parallel to the valve stem. Furthermore, the at least one outer rib 13 and the actuation button 6 are located at diametrically opposite sides of the axis. In addition, the position of the recess 16 has been specified to a position between the outer rib 13 and the actuation button 6, if projected to an imaginary plane including the axis and extending through the locations of the outer rib 13 and the actuation button 6.

The extension of the restoring forces is therefore clarified based on the disclosure of the present application at paragraph [0031] of the published application, in that the restoring force of the valve stem is in the direction of the axis, while the restoring force of the annular spring is a lateral force, that is, a force in a direction different from the axis.

In addition, the valve plate 5 and the valve stem 8 have been clarified as constructional members of the propellant container 2, as disclosed in paragraph [0002] and the drawings, because these are fixed to the propellant container 2 and the foam head 1 may be attached thereto. Accordingly, the contradictions between the description and the claims are overcome by the present amendment.

The figures show that the dispensing opening 7 is formed like a passage and opens out in the receptacle 23 which belongs to the foam dispensing opening. Therefore, the feature *“a foam-dispensing opening, which opens out into a receptacle seated directly on the valve stem”* has been introduced into the claims.

Claim 2 has been amended in a similar manner.

Regarding the formal rejection under Section 112, second paragraph, the amended claims more clearly define that the valve plate 5 and the valve stem 8 are constructional members of the propellant container, as disclosed in the specification.

As shown in Fig. 5, the foam-discharging opening 7 extends from the upper end of the foam head 1 and includes a passage opening out into a receptacle 23 for the valve stem 8. Accordingly, the above amendments to claims 1 and 2 express the meaning of the “foam-discharging opening 7” in greater detail.

Likewise, the geometric orientation of the axis has been clarified in the amended claims in greater detail, such that the at least one outer rib 13 and the actuation button 6 are located at diametrically opposite sides of the axis. Further, the position of the recess 16 has been specified to a position between the outer rib 13 and the actuation button 6 if projected to an imaginary plane including the axis and extending through the locations of the outer rib 13 and the actuation button 6.

Therefore, even if there is more than one outer rib 13, these outer ribs 13 are arranged at the same side of the axis AND opposite to the actuation button 6, according to the amendment.

Regarding the rejection of claim 4 as indefinite, this claim has been canceled.

Turning next to the substantive rejections of the claims, the Applicants respectfully submit that the claims as amended are not rendered obvious over the cited reference combinations.

The foam head of Hayes is adapted to fulfill a vertical movement (see column 3, lines 32-38) and a tilt function of the foam head is not disclosed or suggested. That is, a restoring force for re-tilting the foam head into the original position after actuation is not necessary, according to Hayes.

Accordingly, the beads 54b having a clearance space 57 with respect to the upper portion of the wall 28b when the foam head is in the raised, non-discharging position, are shown at the radially outermost position in Fig. 6. As shown in Figs. 1-3 and 6, during operation, the beads 54b are neither moved inwardly nor moved outwardly. Accordingly, the beads 54b may not fulfill the function of a restoring force for re-tilting the foam head because of not contacting the wall 28b during operation. As the foam head of Hayes comprises two opposing beads 54b, a restoring force would even be counter balanced. The only restoring force is in the vertical direction and is provided by the valve stem. Therefore, by clarifying the position of the at least one outer rib with respect to the defined axis, the distinctions of the invention with regard to Hayes are unambiguously defined in amended claims 1 and 2.

Thus, even a combination of Hayes with Focht does not render obvious the subject matter of claims 1 and 2. The Focht reference shows a dispensing

head; however, this head does not comprise a lower edge having a recess for providing an annular (i.e., horizontal) spring for securing the head with an inner crimped edge of the container. Therefore, Focht in combination with the other references does not render obvious the subject matter of the amended claims.

Therefore, the practitioner would not be led to the present invention by combining the references as proposed. It is respectfully submitted that since the prior art does not suggest the desirability of the claimed invention, such art cannot establish a prima facie case of obviousness as clearly set forth in MPEP section 2143.01. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The application in its amended state is believed to be in condition for allowance. Action to this end is courteously solicited. Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,



Michael J. Striker
Attorney for Applicant(s)
Reg. No. 27233
103 East Neck Road
Huntington, New York 11743
631-549-4700